

ATTORNEY GENERAL[61]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 809A.25, the Attorney General hereby gives Notice of Intended Action to amend Chapter 33, “Forfeited Property,” Iowa Administrative Code.

Forfeited property may be used by the Attorney General (the Department of Justice or “the Department”) in the enforcement of the criminal law. The Department may give forfeited property to any other law enforcement agency within the state if, in the opinion of the Attorney General and pursuant to Iowa Code section 809A.17, it will enhance law enforcement within the state.

The proposed amendments increase the amount of forfeited funds retained by the Department from 10 percent to 20 percent and decrease the amount of forfeited funds given to local law enforcement agencies from 90 percent to 80 percent. The proposed amendments also increase the fee charged by the Department for transfer of title of forfeited vehicles from \$100 to \$200. In addition, the proposed amendments set at 20 percent the amount of proceeds from the sale of forfeited real estate retained by the Department.

The increased revenue to the Department will help the Department to execute its duty to enforce criminal law in the state of Iowa through its Criminal Appeals Division, its Area Prosecutions Division, and its Prosecuting Attorneys Training Coordinator.

The proposed amendments also impose a requirement on law enforcement agencies to notify the Department whenever they seize property for forfeiture. This change is intended to facilitate effective oversight of forfeiture proceedings throughout the state and to enable the Department to monitor the handling of these public funds.

The proposed rules are not subject to waiver. The reporting requirement is not onerous; seeking a waiver would require more effort on the part of the local agency than complying with the rule. As to the amount remitted to the local agency, the 80 percent proposed by this rule making puts the state of Iowa in line with the United States Department of Justice’s practice of returning 80 percent of federal forfeiture proceeds to local seizing law enforcement agencies.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 24, 2009. Such written material should be directed to Thomas H. Miller, Deputy Attorney General, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319; fax (515)281-4209. Persons who wish to convey their views orally should contact Thomas H. Miller at (515)281-3349.

These amendments are intended to implement Iowa Code chapter 809A.

The following amendments are proposed.

ITEM 1. Amend rule 61—33.3(809A) as follows:

61—33.3(809A) Notice to department of forfeited property.

33.3(1) An agency which seizes ~~real~~ property for forfeiture must notify the department within ten days of the seizure. Notice shall include the identity of the party from whom the property was seized, the date and county of seizure, and an inventory of the property seized for forfeiture.

33.3(2) A prosecuting attorney who obtains a declaration of forfeiture or an order forfeiting property must provide the department with a copy of the declaration or the order forfeiting the property within ten working days of receiving the order.

ITEM 2. Adopt the following new paragraph **33.4(4)“e”**:

e. The department will retain 20 percent of the gross sale price of the real property. The balance of the proceeds, 80 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.

ITEM 3. Amend paragraph **33.4(6)“c”** as follows:

c. The department requires payment of a fee of ~~\$100~~ \$200 for processing the transfer of title to a vehicle.

ITEM 4. Adopt the following new subrule 33.4(7):

33.4(7) Cash.

a. The department will retain 20 percent of forfeited cash. The balance of forfeited cash, 80 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.

b. In the event of a cash forfeiture in excess of \$400,000, amounts over \$400,000 shall be apportioned as follows: 40 percent to the seizing agency or agencies; 40 percent to other law enforcement agencies within the region; and 20 percent to be retained by the department.

ITEM 5. Amend rule 61—33.5(809A) as follows:

61—33.5(809A) Use by the department.

~~**33.5(1)**~~ The department will review each item of forfeited property to determine if it is of a nature that would be useful to the department in enforcement of the law. If such a use exists, the department may take possession of the property and retain ownership instead of transferring it to the seizing agency.

~~**33.5(2)**~~ ~~The department will retain 10 percent of forfeited cash. The balance of forfeited cash, 90 percent, will be given to the seizing agency for its use or for division among law enforcement agencies and prosecutors pursuant to agreement.~~

~~**33.5(3)**~~ ~~In the event of a cash forfeiture in excess of \$400,000, amounts over \$400,000 shall be apportioned as follows: 45 percent to the seizing agency or agencies; 45 percent to other law enforcement agencies within the region; and 10 percent to be retained by the department.~~